

REMARKS

Office Action Summary

In the Official Action of November 11, 2008 (“Official Action”), claims 1, 3-5, 8-10, 24, 26-27, 30, and 44-51 were pending. No claims are presently amended, added, or cancelled. Thus, claims 1, 3-5, 8-10, 24, 26-27, 30, and 44-51 will be pending following this response.

All pending claims were rejected in the Official action for the following reasons:

- Claims 1, 3-5, 8, 24, 26-27, 44-48, and 51 stand rejected under 35 USC § 103(a) as being unpatentable over US Patent Publication 2002/0156720 (“Chow”) in view of US Patent 7,158,998 (“Bhuyan”) and further in view of US Patent Publication 2002/0165815 (“Rousseau”).
- Claims 9-10 and 49-50 stand rejected under 35 USC § 103(a) as being unpatentable over Chow in view of Bhuyan, and further in view of applicant admission of prior art.

The claim rejections are discussed below. The examiner is respectfully urged to reconsider the application and withdraw the rejections in view of the following remarks. Should the examiner have any questions or concerns that might be efficiently resolved by way of a telephonic interview, the undersigned attorney invites the examiner to call associated attorney, Jeremiah J. Baunach (Registration No. 44,527) at **206-905-1426**.

Rejections under 35 USC § 103(a)

Claims 1, 3-5, 8, 24, 26-27, 44, 45, 46-48, and 51 stand rejected under 35 USC § 103(a) as being unpatentable over Chow in view of Bhuyan and further in view of Rousseau, US Patent Publication 2002/0165815 (“Rousseau”). Claims 9-10 and 49-50 stand rejected under 35 USC § 103(a) as being unpatentable over Chow in view of Bhuyan, and further in view of applicant admission of prior art.

Claim 1 recites, in part, “utilizing said electronic account, executing said transaction instructions.” In the Official Action, the examiner admits that Chow does not describe the above-cited recitation of claim 1, but does assert that Bhuyan teaches the above-cited recitation.

The above-cited recitation of “executing said transaction instructions” is performed after the step in claim 1 of “determining, at said middleware tier, that said host processing system is unavailable” and before the step in claim 1 of “determining that said host processing system is available.” Thus, the transactions are executed while the host processing system is still determined to be unavailable. Applicants respectfully submit that neither the cited portions of Chow, Bhuyan, nor Rousseau, individually or in combination, teach or suggest the above-cited recitation of claim 1. Bhuyan states that the “transaction is committed to a target database of the transaction and a backup database of the target database *when both the target database and the backup database are available.*” (Abstract, emphasis added). Bhuyan does describe the transactions being recorded in a file when the databases are unavailable (see Abstract). However, these electronic transactions are not actually executed until both databases are available as shown above in the quote from Bhuyan. This is in contrast to the above-cited recitations of claim 1 wherein the transactions are executed while the host processing system is still determined to be unavailable.

For at least the above reasons and others presented in previous Office Action responses, applicants respectfully submit that claim 1 is patentably defined over the cited art. Accordingly, applicants request withdrawal of the rejection of claim 1 as unpatentable under 35 USC § 103(a).

Independent **claims 24, 44, and 51** contain recitations similar to the recitations of claim 1 discussed above. For at least the reasons discussed above regarding claim 1, applicants respectfully submit that claims 24, 44, and 51 are patentably defined over the cited art. Accordingly, applicants request withdrawal of the rejection of claims 24, 44, and 51 as unpatentable under 35 USC § 103(a).

Dependent **claims 3-5, 8-9, 26-27, 30, and 45-50** depend, directly or indirectly, from claims 1, 24, and 44. For at least the reasons discussed above regarding claim 1, 24, and 44, applicants respectfully submit that claims 3-5, 8-9, 26-27, 30, and 45-50 are patentably defined over the cited art. Accordingly, applicants request withdrawal of the rejection of claims 3-5, 8-9, 26-27, 30, and 45-50 as unpatentable under 35 USC § 103(a).

DOCKET NO.: US-0016.01
Application No.: 10/725,168
Office Action Dated: June 9, 2009

**PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116**

Conclusion

Applicants believe that the present remarks are responsive to each of the points raised by the examiner in the Official Action, and submit that claims 1, 3-5, 8-9, 24, 26-27, 30, and 44-51 of the application are in condition for allowance. Favorable consideration and passage to issue of the application at the examiner's earliest convenience is earnestly solicited.

Respectfully submitted,

Date: 10/09/2009

/ Anthony G. Castiglione /
Anthony G. Castiglione
Reg. No. 56,051
Ph: 210-498-0506

USAA Patent Counsel
9800 Fredericksburg Road
San Antonio, Texas 78288